

U. S. Circuit Court. Southern District of
New York

American Graphophone Co.) In Equity
versus) on Patent No.
Universal Talking Machine) 421,450
Manufacturing Company and) No. 8397
George K. Cheney	

PARTIAL RECORD, 1903 - 1904

U. S. Circuit Court. Southern District of New York.

American Graphophone Co.

versus

Universal Talking Machine Manufacturing
Company and George K. Cheney

) In Equity on
) Patent No.
) 421,450
) No. 8397
)

PARTIAL RECORD, 1903-1904

IN THE CIRCUIT COURT OF THE UNITED STATES
For the Southern District of New York.

BILL OF COMPLAINT.

AMERICAN GRAPHOPHONE COMPANY

vs.

UNIVERSAL TALKING MACHINE MANUFACTUR-
ING COMPANY and GEORGE K. CHENEY.

8397
In Equity.

On Patent No. 421,450.

To the Honorable the Judges of the Circuit Court of the
United States for the Southern District of New York.

The AMERICAN GRAPHOPHONE COMPANY, a corporation created and existing under the laws of the State of West Virginia, and having its principal office in Washington, District of Columbia, brings this its Bill of Complaint against the UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY, a corporation created and existing under the laws of the State of New York, and having a regular and established place of business in the City of New York, Borough of Manhattan, at No. 23 East Twentieth Street; and GEORGE K. CHENEY, an inhabitant of said Southern District of New York, and having an office or place of business at No. 152 East Thirty-Fifth Street, Borough of Manhattan, City of New York.

And thereupon, your orator complains and says:

1

That Charles Sumner Tainter, then of Washington aforesaid, was the original and first inventor of a new and useful improvement in Graphophonic Tablets, which was not known or used by others in this country prior to his invention thereof, and was not patented or described in any printed publication in this or any foreign country prior to his invention, and was not in public use or on sale in the United States for more than two years

(1.)

prior to his application for patent therefor, and which has never been abandoned.

2

That thereafter, to wit, on November 14, 1887, said Tainter made application in due form of law to the Commissioner of Patents for the grant of Letters-patent of the United States for said invention, and then and there fully complied with all the provisions of the law of the United States in such case made and provided; that thereupon, due proceedings being had upon said application, Letters-patent of the United States, in due form of law, were issued and delivered to said Charles Sumner Tainter, in the name of the United States of America, under the seal of the Patent Office, and signed and countersigned respectively by the proper officers of the United States, numbered 421,450, dated February 18, 1890, granting to said Tainter, his heirs and assigns, for the term of seventeen years from the date thereof, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof, as by reference to said Letters-patent or a duly authenticated copy thereof, here in Court to be produced, will more fully appear.

3

That thereafter, by an instrument in writing, dated June 1, 1898, duly signed and delivered and recorded in the United States Patent Office the 2nd day of June, 1898, ^{said Charles Sumner Tainter} did grant and convey unto your orator the entire and exclusive right, title and interest in and to the Letters-patent aforesaid and in and to all claims (both in law and in equity) arising thereunder, as by reference to said instrument or a duly authenticated copy thereof, here in Court to be produced, will more fully appear.

4

That your orator has been, ever since the date of the assignment last mentioned, and now is, and was at the time of the

commission of the acts hereinafter complained of, the sole and exclusive owner of said Letters-patent and of all claims for infringement thereof, and is, save for the doings of these defendants and others acting in concert with them, in the exclusive possession of said rights and privileges; and is entitled to the exclusive use, benefits and advantages of the said invention, and to sue for and recover to its own use and in its own name all claims for the infringement or violation thereof.

5

And your orator shows that it has expended large sums of money in practising said invention, and introducing it into public use, and that many thousand grapho^{pho}nic tablets embodying said invention have been made and sold by it, and that your orator's rights in said invention have been generally respected by the public; and that but for the wrongful acts of said defendants your orator would now be in peaceful possession thereof.

6

And further your orator shows, upon information and belief, that the said defendants, and each of them, since the date of last mentioned assignment and prior to the execution of this Bill of Complaint, within the said Southern District of New York, and elsewhere in the United States, have jointly and severally made or caused to be made, and have used for making sound-records thereon, tablets substantially as described, and as particularly set forth in Claim 1 of said Letters-patent, and embodying the invention therein described and set forth, without your orator's license or consent, and in infringement of your Orator's rights, said tablets and sound-records having been made by said defendant CHENEY, for the use and benefit of said defendant UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY; and that defendants have derived large gains and profits, and your orator has incurred large damages from said infringing

acts, but to what amount your orator is ignorant and therefore prays a discovery thereof; and that defendants are prepared and threaten to continue such infringements.

7

And your orator further shows, upon information and belief, that your orator and all persons making, under authority of your orator, tablets embodying said invention, have given notice to the public that the same was patented, and have affixed thereto, or to packages containing the same, the word "Patented" together with the day and year the said patent was granted.

And forasmuch as your orator can have no relief save in this Honorable Court, your orator prays as follows:

1. That the defendants, and each of them, and their associates, attorneys, servants, clerks, agents, workmen, successors and assigns, may be perpetually enjoined and restrained, by writ of injunction issuing out of and under the seal of this Honorable Court, from directly or indirectly making or causing to be made, using or causing to be used, selling or causing to be sold, any tablet embodying or employing or constructed in accordance with the invention as set forth in said Letters-patent;

2. That your Honors will grant to your orator a preliminary injunction to the same purport, tenor and effect as herein before prayed with regard to said perpetual injunction;

3. That defendants be compelled by order of this Court to deliver up to the custody of the Court for destruction, in manner to be provided by said order, all infringing tablets in their or either of their possession or control;

4. That your Honors will grant an accounting for profits and damages resulting from said infringement, and may order said defendants to pay to your orator the amount thereof;

5. That complainant recover from defendants the costs of this suit; and

6. That your orator may have such other and further relief as the equity of the case may require.

To the end, therefore, that defendants may, if they can, show why your orator should not have the relief hereby prayed, and may full, true and direct answer make - but not under oath, answer under oath being expressly waived - according to the best and utmost of their respective knowledge, information, remembrance, and belief, to the several matters herein before averred and set forth, as fully and particularly as if the same were repeated paragraph by paragraph, and said defendants thereto severally and specifically interrogated;- may it please your Honors to grant unto your orator a writ of subpoena ad respondendum, issuing out of and under the seal of this Honorable Court, directed to said defendants UNIVERSAL TALKING MACHINE MANUFACTURING COMPANY and GEORGE K. CHENEY, and each of them, to appear and make Answer to this Bill of Complaint, and to perform and abide by such Order and Decree herein as to this Court shall seem just.

And your orator will ever pray.

ATTEST:

By

Secretary.

(SEAL)

American Graphophone Co
By *Deget*
President.

Philip Mauro
Of Counsel for Complainant.

Elisha K. Camp
Solicitor for Complaint.
277 Broadway,
N.Y. City

State of New York :
County of New York : ss.

EDWARD D. EASTON, being duly sworn, deposes and says:
That he is President of the AMERICAN GRAPHOPHONE COMPANY, named
as complainant in the foregoing Bill; that he has read the
Bill and knows the contents thereof, and that the same is true
of his own knowledge, save as to the matters therein alleged
upon information and belief, and that as to those matters he
believes it to be true; and that the seal affixed to said Bill
is the corporate seal of said complainant, and was by him af-
fixed to the Bill by authority of said corporation.

Subscribed and sworn to before
me, this 18th day of March, 1903.

William E. Kelly

NOTARY PUBLIC, No. 104,
NEW YORK COUNTY.

IN THE UNITED STATES CIRCUIT COURT

Southern District of New York

In Equity, No. 8397

Tainter Patent No. 421,450 (Ozocerite Patent)

American Graphophone Company,
Complainant,

vs.

Universal Talking Machine Manufacturing Company, and George
K. Cheney,
Defendants.

And now to wit, this 1 day of March, 1904, the
parties consenting thereto as per consent hereto attached,
it is ORDERED that the Bill of Complaint be dismissed, each
party to pay its own costs, the parties to be relieved from
any undertaking given by them in this cause.

The undersigned hereby consent to the entry of the above
order.

Editha Combs
us c. J. J. J.
Editha Combs
Solicitor and of Counsel for Compl't

Cluey M. M. M.
Solicitor and of Counsel for Defts.

March 12, 1904.